It was formerly held that the master was not liable for the wanton and wilful act of his servant, because the very fact of its being "wilful" precluded the possibility of its having been within the scope of his employment. *McManus* v. *Crickett,* 1 East 106; *Tuller* v. *Voght,* 13 Ill. 277; *Foster* v. *Essex Bank,* 17 Mass. 479; *Mali* v. *Lord,* 39 N. Y. 381; *Ry. Co.* v. *Baum,* 26 Ind. 70. But the modern rule is otherwise. *Craker* v. *Ry. Co.,* 36 Wis. 657; *Aiken* v. *Holyoke St. Ry. Co.,* 184 Mass. 269; *Magar* v. *Hammond,* 183 N. Y. 387; *Stranahan Co.* v. *Coit,* 55 Oh. St. 398, 4 L. R. A. (N. S.) 506, and note p. 485, *et seq.; Western Union Tel. Co.* v. *Cattell,* 177 Fed. 71. In the principal case, the majority of the court experience no difficulty in finding that the employe was acting in the course of and within the scope of his employment at the time of the injury. The unauthorized permission to ride was, as to the defendant, a nullity, and when the boy got upon the truck, "He was a trespasser, so far as the defendant was concerned." But, conceding this, he was "entitled to the rights of a trespasser," viz., that the defendant should not, through its employe, wantonly or wilfully injure him. Jones, J., dissenting, maintained the view that, since the permission to ride was clearly outside the scope of the driver's employment, the defendant is not liable for the subsequent injury, regardless of the degree of negligence exhibited by the employe. Of the cases he cites to maintain his position, but one, *Driscoll* v. *Scanlon,* 165 Mass. 348, is noted by the majority opinion, wherein it is attempted to distinguish it on the ground that there was in that case no positive act by the employé leading to the injury. But, *quaere,* whether the omission of the servant in that case was not as much in wanton disregard of the safety of the trespasser as was the positive act in the principal case. It would seem that in none of the other cases cited for this view in the dissent was the degree of negligence passed upon and defined as being either ordinary or wanton. *Schulwitz* v. *Delta Lumber Co.,* 126 Mich. 559; *Dover, Admr.* v. *Mayes Mfg. Co.,* 157 N. C. 324; *Hoar, Admx.* v. *Maine Cent. Ry. Co.,* 70 Me. 65; *Bowler* v. *O'Connell,* 162 Mass. 319; *Cut Stone Co.* v. *Pugh,* 115 Tenn. 688; *Kiernan* v. *N. J. Ice Co.,* 74 N. J. L. 175; *Scott* v. *Peabody Coal Co.,* 153 Ill. App. 103. And the last two mentioned are clearly distinguishable from the instant case upon their facts. The situation presented by the principal case is of common recurrence, and the two opinions in this case represent the two points of view, between which the courts are now divided. The majority opinion considers the question in the manner which is usually followed with regard to wanton injuries of trespassers by employés of railroads, viz., that the railroad owes the trespasser no duty except to do him no wanton or wilful injury. *Kirtley* v. *Ry.,* 65 Fed. 386; *Ry.* v. *Hummell,* 44 Pa. St. 375; *Maynard* v. *Ry.,* 115 Mass. 458; *Ry.* v. *Graham,* 95 Ind. 286; *Bresbahan* v. *Ry.,* 49 Mich. 410; *Roden* v. *Ry.,* 133 Ill. 72; *Toomey* v. *Ry.,* 86 Cal. 374, 10 L. R. A. 139. See *supra,* p. 93.

NEGLIGENCE—PARENTS' NEGLIGENCE IMPUTED TO THE CHILD.—P., an infant, three years and nine months old, while on a busy street, unattended, was injured by D's automobile. *Held,* that the negligence of the child's parents, in permitting it to be on the street unattended, would be imputed to the child, so as to defeat a recovery by him, unless he exercises the care required of

ordinarily prudent adult persons under the circumstances. *Sullivan* v. *Chadwick,* (Mass., 1920) 127 N. E. 633.

There has been much conflict in the authorities as to whether or not the negligence of the parents would be imputed to the child, in an action brought by it. The great weight of modern authority is, that such negligence will not be imputed to the child. See cases in 110 Am. St. Rep. 283. The earlier Massachusetts cases laid down the strict rule that the negligence of the parents would be imputed to the child so as to defeat a recovery by it. *Casey* v. *Smith,* (1890), 152 Mass. 294, *Cotter* v. *Lynn & B. R. R.* (1901), 180 Mass. 145. Later Massachusetts cases modified the strict rule of the earlier cases, and held as in the principal case, that the child could recover, even though its parents were negligent, if it did nothing which would be considered careless if its movements were directed by an adult person of ordinary prudence. *Wiswell* v. *Doyle* (1893), 160 Mass. 42, *Miller* v. *Flash Chemical Co.* (1918), 230 Mass. 419. The Massachusetts court again applies a strict rule in requiring a child of tender years to exercise the same standard of care as is required of adult persons. In the majority of jurisdictions in this country the plaintiff would have recovered upon the facts of the principal case. The trial court found a verdict for plaintiff, so it must have been shown that defendant was negligent. The negligence of the parents would not be imputed to the child. *Zarzona* v. *Neve Drug Co., et al* (1919), — Cal. —, 179 Pac. 203. The child would not be held to the degree of care required of adult persons, but only to that degree of care commensurate with its age, experience, and understanding, *Lawrence* v. *Portland Ry. Light & Power Co.* (1919), — Ore. —, 179 Pac. 485, and some courts hold that up to the age of seven years a child is incapable of such conduct as well constitute contributory negligence. *McDonald* v. *City of Spring Valley* (1918), 285 Ill. 52, *Quirk* v. *Metropolitan St. Ry. Co.* (1919), — Mo. App. —, 210 S. W. 103.

NUISANCE—BALANCE OF CONVENIENCE—SMELTING COMPANIES—COURT OF EQUITY RECOGNIZES WARTIME NECESSITY.—Upon a bill to enjoin the operation of certain smelters on the ground that such operation constituted a nuisance, the court found the sulphur fumes emitted in the "smoke stream" of the defendants to be injurious to the crops of the plaintiffs and to be an unlawful interference with the rightful enjoyment of their homes. The trial was closed in 1917. Pending the prosecution of the war no decree was made, the court considering "that the plaintiffs could very well endure some discomfort and take the chance of economic loss in the public interest." Now *held,* that though the industry to be enjoined be a valuable one, the private right to be free from noxious fumes in the air and the injuries to crops incident to fumes is sufficient ground for an injunction forbidding the operation of defendant's smelters. *Anderson* v. *American Smelting and Refining Co.* (U. S. D. C. Utah, 1919), 265 Fed. 928.

Since all the factors in the case remained constant, save the element of public convenience, the successive rulings of the court are a demonstration that the doctrine of balance of convenience is essentially one of balance, the